

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 308] NEW DELHI, FRIDAY, DECEMBER 11, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th November 1953

S.R.O. 2261.—Whereas the election of Shri Panna Lal and Shri Govinda Chamar, as members of the Legislative Assembly of the State of Vindhya Pradesh from the Chhatarpur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ganga Prasad Shastri, son of Shri Kanhaiya Lal, resident of Pratap Sagar Ward, Chhatarpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG, VINDHYA
PRADESH

ELECTION PETITION No. 306 of 1952

PRESENT:

1. Shri S. N. Vaish, B.A., LL.B., Retd. District and Sessions Judge, U.P.,
—*Chairman*.
2. Dr. L. N. Misra, M.A., LL.B., Ph.D., Retd. District and Sessions Judge,
U.P.
3. Shri P. Lobo, Advocate, Supreme Court—*Members*.
1. Shri Ganga Prasad Shastri, s/o Shri Kanhaiya Lal, r/o Pratap Sagar
Ward, Chhatarpur—*Petitioner*.

Vs.

1. Shri Panna Lal s/o Kishori Lal, r/o Pratap Sagar Ward, Chhatarpur
(Congress).
2. Shri Govinda s/o Parmal, r/o Katra Ward, Sarani Darwaza, Chhatarpur.
3. Shri Shankar Pratap Singh s/o Padam Singh, r/o village Barrohi, P.O.
Maharajpur, District Chhatarpur.
4. Shri Srinivas Shukla s/o Raja Ram, r/o Pratap Sagar Ward, Chhatarpur
(Jan Sangh).
5. Shri Deo Dutta s/o Puran, r/o Ward No. 2, Harpalpur, District Chhatarpur
(Independent).
6. Shri Kanhya Lal s/o Kashi Prasad, r/o Bungalow No. 11, Nowgong,
Chhatarpur.

7. Shri Lok Nath Singh r/o Allpura, Chhatarpur District (Socialist).
8. Shri Suraj Das Chamar s/o Lalji, r/o village and P.O. Mau, District Chhatarpur.
9. Shri Dhani Ram Chamar s/o Mohan Lal, r/o Katra Ward, District Chhatarpur (Jan Sangh).
10. Shri Daulat Ram Kapur s/o Daya Ram Kapur, r/o Bungalow No. 5, Nowgong, Chhatarpur.
11. Shri Samsher Bahadur s/o Jang Bahadur, r/o Nowgong, District Chhatarpur.
12. Shri Jang Bahadur Singh s/o Pratap Singh, r/o Chhatarpur (K.M.P.P.).
13. Shri Mahendra Kumar Jain s/o Brij Lal Jain, r/o Gandhi Bhawan, District Chhatarpur.
14. Shrimati Hanskumari Sinha w/o Shamsher Jang, r/o Allpura House, Harpalpur, Chhatarpur.

This is an election petition filed by Ganga Prasad Shashtri challenging the election of Respondents Nos. 1 and 2 to the Vindhya Pradesh Legislative Assembly from Chhatarpur Constituency which is a double member constituency. The Respondents Nos. 1 and 2 who are congress candidates had been declared elected. The Respondents 11 to 14 are said to have withdrawn their candidature after the acceptance of the nomination while the other respondents went to the polls. The petitioner prays that the election of the Respondents Nos. 1 and 2 as well as the election as a whole in this constituency be declared void on the grounds set forth in the petition and the list of particulars including defective ballot boxes, their tampering, the exercise of undue influence, coercion and intimidation, the enlisting of assistance of Government servants including zamindars for the furtherance of the prospects of the Respondents' election, the non-compliance with the rules and orders by Government servants, the improper acceptance of the nomination of the Respondents Nos. 1, 3 and 8 and the other corrupt practices and illegalities to which a detailed reference will be made presently under the issues. The respondents Nos. 1 and 2 contested the petition while the others supported it. The contesting Respondents categorically denied all the grounds for declaring the election to be void and pressed that certain matters be not allowed to go to trial. Issues were thus struck of which Nos. 11(b), 14, 16 and 17 were first heard and disposed of in our order dated January 24, 1953. As a result of our findings and within the limits specified therein, evidence was, however, allowed to be given on the following issues which we take up now:—

REMAINING ISSUES

1. Were the ballot boxes, used in the Election, defective and contrary to the mandatory provisions of law, could they be unlocked and the ballot papers taken out therefrom without their seals being broken and has this resulted in a serious non-compliance with the provisions of the Constitution and the Acts and Rules made for holding Elections. If so, how is the petition affected thereby?

2. Are the allegations in clause (b) of para 7 correct? If so, what is the effect?

3. Was there any non-compliance, on the part of the Presiding Officers, with the provisions of Rules 32 and 33 of the Representation of the People's Rules 1951 as alleged in clauses (c) and (d) of para. 7 of the petition?

4. Was there any non-compliance with or breach of the Rules 49 and 50 on the part of the Returning Officer as alleged in clauses (e) and (f) of para. 7 of the petition? If so, what is the effect?

5. Were the arrangements for the safe transport of the ballot boxes and papers and for their safe custody, defective as alleged in clause (g) of para. 7 of the petition? And were the ballot boxes etc. in fact approached by various people with ample opportunity to tamper them? If so, what is the effect?

6. Are the allegations in clause (h) of para. 7 correct? If so, what is the effect?

7. Were the nomination papers of respondents Nos. 1, 3 and 8 improperly accepted? If so, has the result of the election been materially affected thereby?

8. Are the allegations in clause (j) of para. 7 correct and is the respondent No. 1 disqualified under section 7(d) of the R.P. Act of 1951.

9. Are the allegations in clause (k) of para. 7 correct? If so, what is the effect?

10. Are the allegations in clauses (m), (n), (o) and (p) of para. 7 correct? If so, what is the effect?

11 (a). Are the returns of election expenses filed by the Respondents Nos. 1 and 2 false and incorrect in material particular and have they not been filed in proper form and have not been properly verified?

12. Are the allegations contained in clauses (s) and (t) of para. 7 correct? If so, what is the effect?

13. Are the allegations in particulars Nos. 1 to 3 of the list correct? If so, what is the effect?

15. To what relief if any, the petitioner is entitled?

18. Are the allegations contained in paras. 8 to 11 of the written statements of respondent No. 4 and those in the written statements of Respondents Nos. 6, 9 and 12 correct? If so, what is the effect?

FINDINGS

Issues Nos. 1, 2 and 5.—This constituency is situated in Chhatarpur District. The ballot boxes used in the election were the Godrej type ballot boxes. For reasons detailed in our majority judgment dated this date in the election petition No. 259 of 1952, it is found that the Godrej type ballot boxes used in this election are not in compliance with the provision of the 2nd sentence of Rule 21(1) of the R.P. Rules and that, in this State, there has been a non-compliance with the provision of Rule 21(5) of the R.P. Rules in the affixing of the seals.

But mere non-compliance with the aforesaid provisions of R.P. Rules is no ground for declaring the election of a returned candidate to be void. Under section 100(2)(c) of the R.P. Act it lay upon the petitioner to establish that the result of the election has been materially affected by such non-compliance. The petitioner has produced no evidence to show that the ballot boxes were ever kept unguarded by the police at any place after the polls in such a manner that any body could tamper with them. Hence we hold that the result of this election cannot be said to have been materially affected by the non-compliance with the provisions of the aforesaid Rules.

Issues Nos. 3 and 4.—These issues have not at all been pressed before us nor has it been shown either that there was any non-compliance with the provisions of Rules 32 and 33 or 49 and 50 of the R.P. Rules, or that such non-compliance has materially affected the result of this election. Both issues are, therefore, decided in the negative against the petitioner.

Issue No. 6.—This issue has also not been pressed by the petitioner's counsel. There is no evidence on record to establish the allegations in clause (h) para. 7 of the petition. The issue is decided in the negative against the petitioner.

Issue No. 7.—The petitioner contends that the nomination paper of Respondents Nos. 1, 3 and 8 were improperly accepted by the Returning Officer. The petition does not at all mention the grounds for the improper acceptance of any of these nomination papers, and thus the Respondents were kept in the dark about those grounds upto the stage of arguments.

The petitioner's learned counsel has not pressed this plea about the nomination paper of the Respondent No. 1 and so it is held that the nomination paper of Respondent No. 1 was not improperly accepted by the Returning Officer.

About the nomination of Shankar Pratap Singh, Respondent No. 3, the learned counsel for the petitioner relies on Ex. 22, an order of the Political Agent dated 16th April, 1947 and, on its basis, contends that this Respondent was dismissed on 16th April, 1947 for corruption or disloyalty from the service of Charkhari State and a period of 5 years had not elapsed since that dismissal, at the time of his nomination and hence the Respondent No. 3 was disqualified for being chosen as a member of the Legislative Assembly of the Vindhya Pradesh under Section 7(f) of the R.P. Act.

The first question for decision is whether disqualifications specified in Section 7 of the R.P. Act are disqualifications for a person for being chosen to an Assembly in a Part C State like Vindhya Pradesh or not. Under Section 17 of the Government of Part C States Act of 1951 a person is disqualified from being chosen as a member of the Legislative Assembly if he is, for the time being, disqualified for being chosen as a member of either House of Parliament under any of the provisions of Article 102 (of the Constitution). The petitioner's learned counsel relies on clause (e) of article 102(1) which provides as follows:—

"If he is so disqualified by or under any law made by the Parliament".

The petitioner's contention is that the R.P. Act of 1951 has been made by Parliament and under Section 7 of that Act a person is disqualified from being chosen as member of either House of Parliament.....if he falls within any of the 6 clauses of that section and he, therefore, contends that he is disqualified from being chosen as a member of the Legislative Assembly also in Part C States.

The respondent's learned counsel relies on section 8 of the Government of Part C States Act aforesaid and contends that section 7 of the R.P. Act finds place in part 2 of that Act and by section 8 aforesaid, the provisions of part 2 of the R.P. Act have not been made applicable to elections in Part C States and hence the Legislature cannot in one section be meant not to apply the provisions of part 2 and, in another, to apply those provisions. He relies on the decision of the Himachal Pradesh Tribunal published in the Government of India Gazette dated 19th June, 1953 at page 2029. The Respondent's contention implies that Section 8 relied on by him has excluded the provisions of part 2 of the R.P. Act but that section does not specifically say so. If we look at the scheme of the R.P. Act (given in the very beginning of the Act), we find that part 1 of the Act is headed 'Preliminary' and contains only 2 sections, one dealing with short title and the other with interpretation; Part 2 deals with qualifications and disqualifications for membership and it has got 4 chapters, 1 dealing with qualifications, of membership of Parliament, the second dealing with qualifications for membership of State Legislature, the third deals with the disqualifications and the 4th deals with qualifications and disqualifications for membership of Electoral Colleges; Part 3 deals with Notifications of general Elections and it is divided into 2 chapters, one dealing with Parliament and the other with State Legislature. Then part 4 deals with administrative machinery for the conduct of elections; while part 5 deals with conduct of elections; part 6 deals with disputes relating to elections; part 7 deals with corrupt and illegal practices and electoral offences; part 8 deals with disqualifications (entailed by acts committed during the elections); part 9 deals with by-elections; part 10 deals with miscellaneous; and part 11 deals with general matters.

If we look to the scheme of the Government of Part C States Act, we find that it is divided into only 2 parts, part 1 dealing with preliminary matters and part 2 with Legislative Assemblies. Part 2 contains several sections and each section is given a special heading. If we look to these sections we find that the heading of section 7 is "Qualifications for Membership of the Legislative Assembly" and in that section the requisite qualifications have been specified. Section 8 is headed "Elections to the Legislative Assemblies" and, in that section, instead of specifying the provisions in detail, it has been mentioned that "the provisions of part I and parts III to XI of the R.P. Act 1951 and of any rules and orders made thereunder for the time being in force, shall apply in relation to an election to the Legislative Assembly of a State..... subject to such modifications as the President may after consultation with the Election Commission, by order direct". Then the heading of section 17 is "Disqualifications for Membership" and, as already quoted above, instead of specifying those disqualifications, Parliament has mentioned the provisions of Article 102 and has laid down that they will be those which operate as disqualifications for being chosen as a member of either House of Parliament under that Article. It is significant to note here that the disqualifications mentioned in section 7 R.P. Act are also the disqualifications for being chosen as a member of either House of Parliament by virtue of clause (e) of article 102 and, section 17 has not confined the disqualifications only to clause (a) to (d) of Article 102. Considering the schemes or the frame-work of the R.P. Act and the Government of Part C States Act, it becomes evident that the Parliament which made both these Acts, in Section 8 under heading of Elections specified all the provisions of those parts of R.P. Act which they thought fit as applicable in respect of the elections to the Assembly, and in section 17 of the Act mentioned the disqualifications specified in article 102 for being chosen as member for either House of Parliament. The argument that section 8 aforesaid excludes the provisions of part 2 of the R.P. Act is based on an assumption of such exclusion which is not warranted.

Then the perusal of the 3rd proviso of section 33(3) of the R.P. Act, which finds place in part V of the Act, shows that section 7(f) of the R.P. Act is mentioned in that sub-section. Section 8 of the Government of Part C States Act has made whole of the part V of the R.P. Act applicable to elections in Part C States. A perusal of the Representation of the People (Application to Part C States) Order, 1951, shows that the President has not at all modified section 33 of the R.P. Act. The necessary consequence is that a Returning Officer, at the time of scrutiny of nomination in Part C States also, shall have to consider the provisions of section 7(f) at least.

It is section 7(b) that disqualifies a person from being chosen as a member of either House of Parliament if that person has been convicted by a Court in India and sentenced to transportation or to imprisonment for not less than 2 years unless a period of 5 years or such less period as the Election Commission may allow in any particular case, has elapsed since his release. If it be held that the disqualifications detailed in section 7 of the R.P. Act are not the disqualifications for a person for being chosen as a member of a Legislative Assembly

in Part C States, a convict for more than 2 years immediately on his release would become eligible for election to an Assembly in Part C States and this could never be the intention of the Legislature. Considering all the above mentioned circumstances, with due respect to the Himanchal Pradesh Tribunal, it is held that the disqualifications mentioned in Section 7 of the R.P. Act apply to persons seeking election to Legislative Assemblies in Part C States Act of 1951.

We have now to see if the Respondent No. 3 in fact, was disqualified under section 7(f) of the R.P. Act or not. Section 7(f) of the R.P. Act provides as follows:—

"If having held any office under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has, whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal."

Ex. 22 clearly shows that the charges which were framed against the Respondent No. 3 at that time were of "gross dereliction of duty and absence of proper sense of responsibility of the high office" which he then held. It further shows that no charge of corruption or disloyalty to the State was ever framed against this respondent. No doubt while discussing the Respondent's prayer for mercy the Political Agent in that order, made certain observations about his disloyalty to the State but those observations cannot convert that dismissal into a dismissal for disloyalty.

Then there is an affidavit of the Respondent No. 3 in the nomination file and it shows that, in 1948, on the formation of Vindhya Pradesh, the Respondent No. 3 was appointed Deputy Commissioner of Chhatarpur and the order of dismissal from Charkhari State was set aside and his appointment was deemed to be continuous and he was paid arrears of his salary from the date of his dismissal from Charkhari State service. The petitioner has not produced any evidence before this Tribunal to show the contrary. The Returning Officer was perfectly justified in accepting the nomination paper of the Respondent No. 3 on the ground that no order of dismissal of the Respondent for corruption or disloyalty to the State had been produced before him. It is, therefore, held that the Respondent No. 3 was not in fact, disqualified under Section 7(f).

Now assuming for arguments sake that the Respondent's nomination paper was improperly accepted, the Respondent No. 3 secured only 2798 votes while the Respondent No. 1 who was the candidate for the non-reserved seat secured 7149 votes. The other candidate for the non-reserved seat who secured the next highest number of votes at this election was Kanhya Lal Tiwari who got only 2703 votes. It is thus evident that the Respondent No. 1 had won this election by a margin of 4446 votes over those secured by Kanhya Lal Tiwari and even if it be taken that all the 2698 votes secured by Respondent No. 3 would have been cast for Kanhya Lal Tiwari the Respondent No. 1 would have won the election. Hence it is held that even if the nomination paper of Respondent No. 3 be taken to have been improperly accepted the result of the election cannot be said to have been materially affected by such improper acceptance.

About Suraj Dass, the Respondent No. 8, the nomination file shows that he filed 2 nomination papers, Exs. 13 and 14. The Returning Officer rejected Ex. 13 but accepted Ex. 14. This Respondent was a candidate for the reserved seat. The nomination paper, Ex. 14, has got printed on it also a declaration required by the first proviso of section 33(3) of the R.P. Act. There are no signatures, of the Respondent No. 8 below that declaration although the blanks of that printed declaration have been filled in. That declaration purports to have been duly verified by this Respondent before a first class Magistrate. The petitioner's learned Counsel contends that for want of signatures below this declaration, the nomination should be treated as one without a declaration and it is consequently invalid.

The first proviso of section 33(3), relied on by the petitioner's Counsel requires only a declaration *verified* in the prescribed manner. It does not require a declaration in writing subscribed by the candidates as is required by Section 33(3) (to which this proviso has been added). The absence of the word "in writing subscribed by the candidate" after the word 'candidate' in the proviso clearly shows that this declaration was not required either to be in writing or to be signed by the candidate. It merely required that the declaration ought to be one verified in the prescribed manner. No defect in the verification has been pointed out to us. The Returning Officer rightly considered the want of signatures of the Respondent below this declaration in Ex. 14 a mere technical defect which was not of a substantial nature within the meaning of Section 36(4). It is, therefore, held that the nomination of the Respondent No. 8 was not improperly accepted by the Returning Officer.

Issues No. 8, 9 and 12.—These issues have not been pressed before us and they are all decided in the negative against the petitioner.

Issue No. 10.—About allegations in clause (p) of para. 7 of the petition, the petitioner's counsel relies on the solitary statement of P.W. 21, and, on its basis, contends that when Bansī the Zamindar of Pirpa brought 50 or 60 voters to Sindurki Polling Station the agent of the Respondent asked him to get their votes cast in the box of bullocks and thereupon Bansī told those voters to cast their votes in the box of bullocks. Ex. 42 is a written objection which was made to the Presiding Officer by the petitioner's agent and in this objection it was mentioned that Bansī tore away the parchis of the voters and did his own canvassing. This objection did not at all mention that Bansī had done any canvassing at the request of the Respondent's agent as now stated by P.W. 21. The petitioner has not produced any evidence to show that any parchis were torn by Bansī. Ex. 41 is another written objection which had been filed before the Presiding Officer by the Agent of a Jan Sangh candidate and it merely mentions that Bansī Zamindar tore away the parchis of those voters of his party who were not ready to cast the votes in the box of bullocks. That objection does not complain of any canvassing even by Bansī. Under such circumstances it is hard to believe the uncorroborated statement of P.W. 21 of this kind.

The petitioner's learned Counsel has not pressed any of the allegations in clauses (m), (n) and (o) of para 7 of the petition. The issue is, therefore, decided against the petitioner in the negative.

Issue No. 11(a).—We have already decided Issue No. 11(b) and held that the petitioner is debarred from producing evidence about the return being false (*vide* our judgment dated 24th January, 1953). The petitioner did not produce any evidence on this point but, during the cross-examination of R.W. 3, that witness stated that the Respondent did not pay him any sum of Rs. 25 although he admitted executing the receipt Ex. 1/B which forms part of the Return of election expenses. On the basis of this statement of R.W. 3, the learned Counsel for petitioner contends that the respondent filed a false return. But R.W. 3 appears to be making a false statement that he did not get those Rs. 25 and so, the return of the expenses filed by the Respondent cannot be said to be false.

No defect in the filing of the Return of Expenses has been pointed out to us by the petitioner's counsel. The issue is, therefore, decided in the negative against the petitioner.

Issue No. 13.—This issue is based on the particulars of the list annexed with the petition. The particulars are hence taken up *seriatim*.

About particular No. 1—

This particular reads as follows:—

"That in the village of Sahawa, Mao and others from about 10 days prior to the date of polling Shri Chaturbhuj (Zamindar of Dhamchi) village officer in District Chhatarpur, exerted undue influence on the voters and threatened them with injury if they did not vote for the Respondents No. 1 and 2. This was done at the instance of and in connivance with the Congress candidates and their agents and workers for furtherance of the prospects of the Respondents Nos. 1 and 2 in the Election".

The Respondent No. 2 Govinda Chamar admits that he did not appoint any separate polling agents or canvassers for himself and the polling agents and canvassers appointed by Pannalal Respondent No. 1 had worked as his polling agent and canvassers also. Both these Respondents were the Congress candidates in this constituency. The Respondent No. 1, as R.W. 29, admits that Chaturbhuj of Dhamchi was appointed polling agent for Gaurgaon under appointment forms Exs. 1 and 2 and that he worked as such and canvassed for both the Respondents. He further admits that he paid remuneration to Chaturbhuj for so acting under receipt Ex. 45. Ex. 45 shows that Rs. 37/8/- were paid to Chaturbhuj for his working from 16th January 1952 to 21st January 1952.

The first question for decision is if Chaturbhuj was a Zamindar of Dhamchi or not. Besides P.Ws. 1 to 4, 6, 12, 13 and 23, R.W. 18 also admits that Chaturbhuj was the Zamindar of Dhamchi. Ram Dass P.W. 23 swears that, prior to Chaturbhuj, Dharnidhar the deceased father of Chaturbhuj was the Zamindar of Dhamchi. There are on this record 5 Sarkhats, Exs. 23, 46, 47, 48 and 24 relating to different tenants of this village which clearly establish that Chaturbhuj realised the rents in January, 1951, May, 1951, December, 1951 and March, 1952, April, 1952, June, 1952 and April 1953 and signed these Sarkhats for those realisations. Exs. 50 to 52

are the Cash Books about Dhamchi. They clearly establish that Chaturbhuj realised the rents from 4th January, 1951 to 28th June, 1951, on 21st July, 1951 and from 19th April, 1952 to 8th August, 1952 as well as on 11th June, 1953. Exs. 54 and 55 to 63 are counterfoils of forms B. 6 which have been requisitioned from the Tehsil. B. 6 is a sort of a challan form for crediting monies into the Treasury prescribed by the Revenue Department. In form Ex. 54 Chaturbhuj is mentioned in the column of "Name of Patel" and Chaturbhuj has affixed his signatures about the receipt of his commission for Sambat, 2008 (1951-52). Ex. 60 shows that it was Chaturbhuj who deposited the rent in the Treasury on 30th June, 1951. Exs. 55 to 59 show that it was Chaturbhuj who deposited the rents in the treasury on 30th April, 1952, 19th May, 1952, 18th August, 1952, 21st June, 1952 and 9th July, 1952. In Ex. 61, which is dated 19th June, 1951, in the column of Patel against the name of Chaturbhuj are written the words 'ten annas Zabt' but the words 'Six annas Bahal four annas' have been scored out and there are no initials or signatures of any body about that scoring. In Ex. 62, the counterfoil dated 16th August, 1951, in column 3, at first the words Chaturbhuj Zamindar were written but the word "Zamindar" has been so scored out as not to make it easily decipherable and the scoring out is neither signed nor initialled but there are the signatures of Chaturbhuj in column 11-12 about the receipt of his commission. In Ex. 63 the words 'Bahal four annas' against the name of Chaturbhuj in column No. 3 have been scored out without there being any initials or signatures. The counterfoils of these forms B-6 maintained in the Treasury were then requisitioned by the Tribunal and Ganeshilal, the Treasury Clerk who brought them, was examined as C.W. 1. The words which have been scored out in Exs. 61, 62 and 63 are not to be found as scored out or tampered with in the counterfoils of these forms brought from the Treasury. Ganeshilal himself signed Exs. 62 and 63 and he swears that there were no corrections or alterations at all in those forms at the time this witness affixed his signatures thereto. It is significant to note here that these alterations have been made in the form B-6 of 1951 as a clumsy but dishonest attempt to show that Chaturbhuj was not a Zamindar in 1951 although the forms B-6 of 1952 have not been tampered with. The only inference that the Tribunal can draw from these facts is that these forgeries have been committed in Exs. 61 to 63 merely to prepare the foundation for Respondent's arguments that Chaturbhuj has not been proved to have been recorded as a Zamindar in the column of Patel in 1951. The statement of Govind Prasad P.W. 19 who is the Wasil-Baqi Navis of this Tahsil shows that, after 1949, no Register of Zamindars has been prepared and that a new register of Zamindars has been prepared in this Tahsil during the pendency of this petition. It further shows that in the new Register, about Dhamchi, it has been written that "Mutation about Zamindar has not been made". Dharnidhar, the father of Chaturbhuj, died about the end of 1950 and in Exs. 61 to 63, as they originally stood, Chaturbhuj was recorded as Zamindar in column 3 whose heading is 'Patel'. Ganeshi Lal, C.W. 1, further states, that after the formation of V.P. the Zamindars of villages in Tahsil Chhatarpur are known as Patel. It is thus obvious that the entry aforesaid in the new register of Dhamchi shows nothing more than an attempt of the Tehsil officials, to provide the Respondent's counsel with a basis for his argument that no mutation having been in favour of Chaturbhuj he cannot be said to be a Zamindar or Patel of this village in 1951 i.e. at the time of this election and hence this argument of the Respondent's counsel has absolutely no force at all. It is, therefore, held that this Chaturbhuj has been the Zamindar or patel of Dhamchi from the beginning of 1951 till the end of 1952 and that he has been so recorded in the forms B-6 and Cash Books of those years, and had been working as such at the time of this election.

Coming to the determination of the status of the Zamindar of Dhamchi, there are the statements of Babu Lal, P.W. 1 and Govind Prasad P.W. 19 that Dhamchi is a village of old Chhatarpur State and this fact has not been denied on behalf of the Respondents. Section 110(1) of the Rent and Revenue Law of Chhatarpur State (compiled in 1933) provides that the State shall appoint one or more Zamindars for each village. Section 111 provides that the remuneration of a Zamindar shall be fixed by the State. Section 112 of the aforesaid law provides for the duties of a Zamindar as follows:—

- (a) To keep watch over the work of the Patwarl and the Chowkidar of the village;
- (b) To safeguard the State property like wells, tanks, Dharamshalas etc.;
- (c) To prevent unlawful possession of others over the thoroughfares, foot paths and land of common use of the village and to make reports about these matters and to arrange that such areas are used for the purpose for which they have been reserved;
- (d) To report about the unlawful possession of others if any, over the boundaries of the village and, if possible, to prevent the same;

(e) To maintain average cleanliness in the village; and

(f) To do such works as may from time to time be entrusted to him.

Section 110 and 112 aforesaid find place in chapter 10 whose heading is "Village Officers". Section 112(2) provides for the following further duties of a Zamindar:—

(a) In Khalsa village to realise all the Government dues and to help their realisation;

(b) To give land for building of houses within the limits of the village; and

(c) To arrange for the uncultured land or the waste land under the orders of the Tahsildar.

A printed Circular No. 12, dated 1st September, 1934 has been shown to us by the petitioner's counsel who has also shown us the Chhatarpur State Gazette dated 4th January, 1953 which, at page 16, serial No. 3, makes the Circular dated the 1st September, 1934 operative about the appointment and punishment of Zamindars. Rule 8 of this circular mentions that a Zamindar is the first 'Chief Officer' of the village. R.W. 19 admits that, in a village, there is no officer superior to the Zamindar. It is not denied that the old Chhatarpur Rent and Revenue Law prevailed in the villages of that state after the formation of the present Tahsil of Chhatarpur also.

Under such circumstances it is held that Chaturbhuj was the village officer of Dhamchi employed in the V.P. States at the time of this election.

Panna Lal Respondent, as R.W. 29, admits that he appointed Baijnath the Zamindar of Hama and Munni Lal the Zamindar of Manpura as his polling agents. The statement of Govind Prasad P.W. 19 shows that both these villages were formerly the villages of Chhatarpur State. Hence both these Zamindars also were the village officers of these two villages employed in the State of V.P. at the time of this election. It is, therefore, held that the Respondent did obtain the assistance of the village officers of Dhamchi, Hama and Manpura for the furtherance of the prospects of his election and thereby committed the corrupt practices specified in the Section 123(8) of the R.P. Act.

The Respondent's learned counsel relied on Appointment Form Ex. A/2 to show that the petitioner appointed one Din Dayal Chaurasia as his polling agent at Malehra B. He then relies on the statement of Kashi Prasad P.W. 20 to show that one Din Dayal s/c Ganesh Mahton is the Zamindar of Malehra. Ex. 25 shows that one Din Dayal Mahton was the polling agent of Mata Din Chaurasia, a Jan Sangh candidate at Garhi Malehra (which according to Sarju Prasad R.W. 7 is the same as Malehra B.) These facts do not show that Din Dayal Chaurasia whom the petitioner appointed his polling agent under Ex. A-2 was the zamindar of Malehra. The Respondents have thus failed to prove that the petitioner also employed any Zamindar as his polling agent and we need not decide the effect of petitioner's employing a Zamindar as his polling agents for the purpose of this petition.

Under Section 100(2)(b) of the R.P. Act, the Respondents having committed the corrupt practice specified in Section 123(8) of the R.P. Act, their election is void.

About particular No. 2—

This particular reads as follows:—

"That at Mao polling station on the date of polling Shri Sunnu Lal Jain, Polling Agent of Respondents Nos. 1 and 2 and Shri Devi Joshi a worker of the respondents Nos. 1 and 2 were sitting inside the booth, and while the polling was in progress they were directing the voters to cast their votes in the ballot boxes of Respondents Nos. 1 and 2; the Presiding Officer of the said polling station did not object to the presence and actions of the said persons, in spite of petitioner's agent's objections. This was done in connivance with and at the instance of Respondents Nos. 1 and 2 and their workers and agents for the furtherance of the prospects of the Respondents Nos. 1 and 2 in the election".

The statements of P.Ws. 3, 5 to 7 and 9 to 11 show that Sunnu Lal and Devi Joshi were canvassing for the two returned candidates under a Pipal tree which was at a distance of only 15 or 20 yards from the polling compartment. R.W. 31 is the Presiding Officer of the Polling Station Maoshania. He also admits that Devi Joshi was canvassing at a distance of only 20 yards from the place where he himself was sitting, that is to say, within the booth area, by distributing identity slips of the Congress party to the voters. He further admits that he had arrested Devi Joshi as he was canvassing within the area of the booth. He also admitted that Devi Joshi had told him that the slips which he was distributing had been given to him by Sunnu Lal and so he arrested Sunnu Lal as well. He

then admitted that Sunnu Lal had stated before him that he gave those slips to Devi Joshi. This Presiding Officer had sent his daily report Ex. 29 about this polling station and in that report also he mentioned that he arrested Devi Joshi and Sunnu Lal aforesaid at 2 p.m. Panna Lal Respondent, as R.W. 29, admits that this Sunnu Lal was his polling agent. It is thus obvious that Devi Joshi with the connivance of Respondents' polling agent, Sunnu Lal, was canvassing within the booth area on the date of polls. Such canvassing within the booth area is prohibited by section 130 of the R.P. Act, 1951 and was certainly an attempt on his part to interfere with the free exercise of the Electoral right of the voters, in other words it is undue influence within the meaning of section 123(2) of the R.P. Act. Sunnu Lal and Devi Joshi have not been examined by the Respondents. We, therefore, hold that the respondents committed the corrupt practice under section 123(2) through their agent Sunnu Lal and worker Devi Joshi.

About particular No. 3—

This particular reads as follows:—

"That at Baghota polling station, two zamindars of the village (who are village officers) were appointed as polling agents of the Respondents Nos. 1 and 2 respectively. Their presence in the polling booth during the course of the election was a direct interference with the free exercise of the electoral right of the voters. The Presiding Officer permitted these village officers to act as polling agents of the Respondents Nos. 1 and 2 in the Election".

The petitioner had not produced any evidence to substantiate these allegations. But Panna Lal, Respondent, as R.W. 29, admits that he appointed Swami Prasad the Zamindar of Baghota as his polling agent and gave him a duly filled up appointment form but he refused to work. It is thus obvious that the Respondent No. 1 attempted to obtain the assistance of this Zamindar of Baghota for the furtherance of the prospects of the Respondents' election and thereby committed the corrupt practice specified under Section 123(8) of the R.P. Act.

The petitioner's learned counsel relies on the statement of Salig Ram (R.W. 27) who was the polling agent of the Respondents and raises a point which was not raised in the petition or the list and about which no issue has been framed. His contention is that this witness had brought a lame elector Paltua, on his cycle to the booth and hence that agent of the respondents committed the major corrupt practice specified in section 123(6) of the R.P. Act, 1951, but what the witness states is that he had brought that elector on his cycle to the hospital which was close to the booth for medical treatment. The witness made this very statement before the Presiding Officer (*vide* Ex. 44). The Presiding Officer in the order, Ex. 39 mentioned that this witness brought Paltua on his cycle due to pain in his leg. We see no reason to disbelieve R.W. 27 when he states that he had brought Paltua to the hospital as he used to do every day. We find no force in this contention of the learned counsel for the petitioner and hold that no corrupt practice under Section 123(6) was committed by Salig Ram.

Issue No. 15.—By reason of our findings on Issue No. 13 detailed above that the Respondents 1 and 2 committed the corrupt practice specified in Section 123(8) of the R.P. Act and their agent Sunnu Lal and worker Devi Joshi committed the corrupt practice under Section 123(2) the petitioner is entitled to get their election declared void.

Issue No. 18.—In view of our findings on issue No. 17 (*vide* our order dated 24th January, 1953) to the effect that respondents 4, 6, 9 and 12 are not entitled to support the petitioner on grounds other than those mentioned in the petition, this issue does not call for any decision.

(Sd.) SHEO NARAIN VAISH.

(Sd.) L. N. MISRA.

In view of the findings of the majority of the Tribunal,

ORDER

It is ordered that the election of Respondents Nos. 1 and 2 be declared void.

The Respondents Nos. 1 and 2 did commit the corrupt practice specified in Section 123(8) and also that specified in Section 123(2) of the R.P. Act, 1951 through their agent Sunnu Lal and worker Devi Joshi. The petitioner shall get Rs. 300 from the Respondents Nos. 1 and 2 as his costs, and the Respondents shall bear their own costs.

NowGONG, V.P.;

The 10th November, 1953.

(Sd.) SHEO NARAIN VAISH, Chairman.

(Sd.) L. N. MISRA, Member.

(Sd.) P. LOBO, Member.

DISSENTING JUDGMENT

I have, with due respect, disagreed with my colleagues on some issues or portions of some issues. I give below my reasons for the same:—

Issues Nos. 1, 2 and 5.—It is my view that there has been no defect in the design or manufacture of the ballot boxes. One of the two persons viz. Jang Bahadur Singh who demonstrated before the Tribunal how the ballot boxes could be opened without damaging any of the seals or breaking the twine admitted that if the wax seals were put quite close to the knots of the twine on the lid then it would be impossible to open the box in the manner he and his companion Jai Singh did. I have discussed this at some length in E.P. No. 257 of 1952, Vidya Vati Vs. Mahendra Kumar dated 10th November 1953. As there is no inherent or intrinsic defect in the manufacture of the ballot boxes I hold that non-compliance with any election law or rule has not been established.

Issue No. 7.—I am of the opinion that the disqualifications for the membership of a State Legislature as laid down in R.P. Act, 1951 are not applicable to Part C States. There has been a special enactment in this regard by Parliament called Part C States Act, 1951 which derives its force from Art. 240 of the Constitution.

Moreover in Section 8 of the Part C States Act, 1951, Part II of the R.P. Act, 1951 has been deliberately omitted. With this statutory omission, there is no point in looking at the scheme and framework of the R.P. Act, 1951 or of the Part C States Act, 1951. I have dealt with this aspect of the law in E.P. 257 of 1952 Vidya Vati Vs. Mahendra Kumar dated 10th November, 1953. Further discussion is unnecessary as I hold that the petitioner has failed to show any legal basis for his allegations.

(Sd.) P. LOBO, Member.

The 10th November, 1953.

ANNEXURE

IN THE COURT OF THE ELECTION TRIBUNAL AT NOWGONG V. P.

PRESENT:

- | | |
|--|------------|
| 1. Shri S. N. Vaish—Chairman. | |
| 2. Dr. L. N. Mishra, M.A., LL.B., Ph.D. | } Members. |
| 3. Shri P. Lobo, Advocate, Supreme Court | |

ELECTION PETITION No. 306 of 1952.

1. Shri Ganga Parsad Shastri—Petitioner.

Vs.

- | | |
|-------------------------------|----------------|
| 1. Shri Panna Lal Jain. | } Respondents. |
| 2. Shri Govinda Chamar. | |
| 3. Shri Shanker Pratap Singh. | |
| 4. Shri Srinewas Shukla. | |
| 5. Shri Deo Dutta. | |
| 6. Shri Kanaihya Lal. | |
| 7. Shri Lok Nath Singh. | |
| 8. Shri Suraj Das Chamar. | |
| 9. Shri Dhani Ram. | |
| 10. Shri Daulat Ram. | |
| 11. Shri Shamsher Bahadur. | |
| 12. Shri Jang Bahadur Singh. | |
| 13. Shri Mahendra Kumar Jain. | |
| 14. Shrimati Hansmukhi Sinha. | |

ORDER

This is a petition under section 81 of the R.P. Act of 1951 filed by the petitioner above named calling in question the election of Respondent Nos. 1 and 2 to the V. P. Legislative Assembly from Chhatarpur double member constituency. The Respondents Nos. 11 to 14 are alleged to have withdrawn their candidature after the acceptance of their nomination papers and the other Respondents went to the polls. It is further alleged that the Respondents 1 and 2 were declared elected.

The Election has been challenged on various grounds comprising of corrupt and illegal practices, defective ballot boxes, tampering with them, undue influence, improper acceptance of the nomination papers of Respondents Nos. 1, 3 and 8 and the disqualifications of the Respondents No. 1 from being chosen as a member of the V. P. Legislative Assembly as set forth in detail in the petition.

The Respondents Nos. 1, 2, 4, 6, 9 and 12 have filed their written statements but only the Respondents 1 and 2 contest the petition while the others support it. The contesting Respondents had denied all the allegations of the petitioner and have further attacked the petition alleging that it is not maintainable on account of non-compliance with the provisions of the R. P. Act, 1951. The pleadings of the parties gave rise to several issues out of which the following were first taken up for decision as preliminary issues:—

No. 11(b).—Should the petitioner be debarred from producing evidence about the returns being false by reason of his failure to give full particulars as required by section 83(2) of the R. P. Act of 1951?

No. 14.—Are the allegations in clauses (h), (i), (j), (l), (n), (q), (o), (p), (r) and (u) of para. 7 too vague and general and should be taken off the petition and should they not be allowed to go to trial?

No. 16.—Should the petitioner be called upon to furnish additional security under section 118 of the R.P. Act?

No. 17.—Are the Respondents 4, 6, 9 and 12 entitled to support the petition on grounds other than those alleged in the petition?

FINDINGS

Issue No. 11(b).—The petitioner's allegation on the point is contained in clause (r) of para. 7 of the petition which reads as follows:—

"Because the return of the election expenses filed by the Respondents Nos. 1 and 2 are false and incorrect in material particulars and are not in the proper form and have not been varified properly".

The Respondent's counsel contends that the allegation is vague and general and that the petitioner has not given in the list appended to the petition any particulars of the items in the return on the basis of which he has made this charge against the Respondents.

The term "corrupt practice" has been defined in section 2(c) of the R.P. Act of 1951 as follows:—

"corrupt practice means any of the practices specified in section 123 or 124".

Section 124 (4) constitutes the making of any return of election expenses which is false in any material particular a *corrupt practice*.

Section 83(2) provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt practice which the petitioner alleges. It is thus obvious that the petitioner was bound to give, in the list full particulars of the said corrupt practice alleged by him and thus so far as the commission of this alleged corrupt practice is concerned, the Tribunal is of the opinion that the petitioner can not be allowed to produce evidence about the return being false in material particular.

Issue No. 14.—Regarding clauses (h), (i), (j) and (l) of para. 7 of the petition the Respondent's learned counsel concedes that these allegations do not amount to corrupt or illegal practices as defined in the act, and he has therefore not pressed his objections thereto.

Regarding clause (r) of para. 7 of the petition, a separate clause No. 11(b) has been framed and already decided by us above.

Regarding clauses (n), (o) (q) and (u) of para. 7, the Tribunal finds that there is material both in the petition and the list which give sufficient notice to the Respondent as to the charges which they have to meet and therefore they can go to trial. We are of the opinion of the petition that the allegations in these clauses are not vague and general should not be taken off the petition but allowed to go to trial.

Issue No. 16.—This issue was not seriously pressed before us and we see no sufficient ground to call for any additional security.

Issue No. 17.—The Respondents 4, 6, 9 and 12 in their written statements not only support the petition but also allege certain illegalities and irregularities on the part of the returned candidate which have not been alleged by the petitioner himself. The petitioner's learned counsel relies on order 8 rule 2 C.P.C. and contends that a Respondent who has been called upon to file a written statements can take all the pleas which are within his knowledge and which can be taken by a defendant in a suit. But the Election Law is special Law and, under section 80 of R.P. Act of 1951, an election can be challenged by the presentation of a petition within the prescribed period. The Act does not contemplate the challenging of an Election by means of a written statements by a Respondent after the expiry of the prescribed period. The analogy of the C.P.C. can not, therefore, be imported into the Election law and the petitioner can not be allowed to raise new grounds of

attach through some of the Respondent by means of written statements, specially when the petitioner himself can not do so by amending the petition with the introduction of fresh allegations. The Tribunal, therefore, finds that the Respondents aforesaid can not support the petition on the grounds of any illegality or irregularity not alleged by the petitioner himself.

One of us has disagreed with this view of the Majority of the Tribunal and his dissenting views on this issue are appended below:

(Sd.) SHEO NARAIN VAISH, *Chairman.*

NOWGONG, V.P.;

The 24th January, 1953.

(Sd.) L. N. MISRA, *Member.*

(Sd.) P. LOBO, *Member.*

Shri P. Lobo.

Issue No 21.—I have seen the majority judgment with regard to this Issue and with great respect differ from it. It is difficult to understand what is the point in notifying all other duly nominated candidates to an Election Petition if they are to be joined as "dummy" Respondents. If they are free to support, they are also free to oppose the returned candidate. Their only function can not be to bring up the rear in support of the returned candidate. What if such a Respondent, who is not a returned candidate, does not belong to the political party of the returned candidate? True, the Legislature has set up a machinery with regard to any complaint that may be put up concerning an Election; but it is just likely that such a duly nominated candidate as we are considering, has not been able to file a Petition for want of finance etc. and is possessed with the knowledge of some illegality or irregularity which the Petitioner may have been ignorant of: in the circumstances, I consider it would be in the interests of justice to let a duly nominated candidate bring to the notice of the Tribunal in his written statement, which he has been called upon to file, any illegality or irregularity to which he can over.

It is argued that it may happen that a Petitioner may fail on his own Petition and yet his desired result, of declaring the election, of the returned candidate or the whole election, void, be achieved by virtue of a written statement filed by a respondent who is not the returned candidate. It is further urged that this would side track the period of limitation for filing Petitions as provided for in the R.P. Act and Rules of 1951 may it be contended, that such a written statement, may virtually have the effect of an amendment of the petition. Considering all these aspects, I still fail to see why a relevant illegality or irregularity as framed in this issue should not fully see the light of day and its wrong doer go unpunished. I therefore hold that there is no bar for a Respondent who is not a returned candidate to bring to the notice of the Tribunal, and incidentally perhaps support the Petition any illegality or irregularity not alleged by the Petitioner.

It was said in Bombay City (MU) 1924 case published at page 173 of Hemmond's Indian Election Cases 1936 in Annexure C at page 181 that the reason for joining other candidates as respondents was to give them an opportunity to raise re-criminations to show that the Petitioner is not entitled to the declaration which he claims. This observation, it much be respectfully pointed out, does not meet the above discussion.

The Legislature may later define or limit the scope of the representation to be made by such Respondents, who are not returned candidates, in their respective written statements but the Law as it stands at present places no bar on such Respondents, at least to this limited extent, of placing before the Tribunal any illegality or irregularity committed at the Election.

(Sd.) P. LOBO.

NOWGONG, V.P.

The 24th January, 1953.

[No. 19/306/52-Elec.III/7638.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.
to Election Commission, India.